

# **EXHIBIT A**

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 NAME :  
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 PAGE(S) 18  
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FROM: Quan L. Nguyen

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# OF PAGES (INCLUDING COVER): 18

FILE NAME: 17400 CIP (OCU) ALLE6002-100

DATE: August 3, 2006

FILE #: 186649

RECIPIENT(S)	EXAMINER	FAX										
U.S. Patent Office	Zohreh Fay	571-273-8300										
<table border="1"> <tr> <td>Docket No.:</td> <td>ALLE6002-100</td> </tr> <tr> <td>In re application of:</td> <td>James A. Burke, et al.</td> </tr> <tr> <td>Serial No.:</td> <td>09/998,718</td> </tr> <tr> <td>Filed:</td> <td>11/01/2001</td> </tr> <tr> <td>Group Art Unit:</td> <td>1618</td> </tr> </table>			Docket No.:	ALLE6002-100	In re application of:	James A. Burke, et al.	Serial No.:	09/998,718	Filed:	11/01/2001	Group Art Unit:	1618
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Group Art Unit:	1618											

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<i>In re application of:</i> James A. Burke, et al.		
<i>Serial No.:</i> 09/998,718		
<i>Filed:</i> 11/01/2001		
<i>Group Art Unit:</i> 1618		
<i>Confirmation No.:</i> 7192		
<i>For:</i> Methods and Compositions for Treatment of Ocular Neovascular and Neural Injury		

Attached please find:

- Transmittal Form (1 page)
- Fee Transmittal (in duplicate)
- Terminal Disclaimers (2 pages)
- Request for Reconsideration (7 pages)
- One Month Extension of time (2 pages)
- Declaration of L. Wheeler (2 pages)
- Declaration of S. Donovan (1 page)


IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL [215.665.2000] or [800.523.2900] IMMEDIATELY. THIS TRANSMISSION IS ALSO BEING SENT VIA:

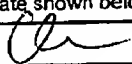
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<b>TRANSMITTAL FORM</b>  <small>(to be used for all correspondence after initial filing)</small>	Application Number	09/998,718
	Filing Date	11/01/2001
	First Named Inventor	James A. Burke
	Art Unit	1618
	Examiner Name	Zohreh Fay
Total Number of Pages in This Submission	Attorney Docket Number	ALLE6002-100 17400 CIP (OCU)

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <div style="margin-left: 20px;"><input type="checkbox"/> Fee Attached</div> <input checked="" type="checkbox"/> Amendment / Reply <div style="margin-left: 20px;"><input type="checkbox"/> After Final</div> <input checked="" type="checkbox"/> Affidavits/declaration(s)  <input checked="" type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <div style="margin-left: 20px;"><input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53</div>	<input type="checkbox"/> Drawing(s)  <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition  <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address  <input checked="" type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) ____ <div style="margin-left: 40px;"><input type="checkbox"/> Landscape Table on CD</div>	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter  <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Fax Coversheet; Declaration of L. Wheeler; Declaration of S. Donovan
<div style="border: 1px solid black; display: inline-block; padding: 2px 5px;">Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm	Cozen O'Connor		
Signature			
Printed Name	Quan L. Nguyen		
Date	August 3, 2006	Reg. No.	46,957

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature			
Typed or printed name	Quan L. Nguyen	Date	August 3, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**FEE TRANSMITTAL  
for FY 2006**☐ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 480**Complete if Known**

Application Number	09/998.718
Filing Date	11/01/2001
First Named Inventor	James A. Burke
Examiner Name	Zohreh Fay
Art Unit	1618
Attorney Docket No.	ALLE6002-100 17400 CIP (OCU)

**METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) : \_\_\_\_\_☒ Deposit Account Deposit Account Number: 50-1275 Deposit Account Name: Cozen O'Connor

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) ☒ Credit any overpayments

Under 37 CFR 1.16 and 1.17

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	—
Design	200	100	100	50	130	65	—
Plant	200	100	300	150	160	80	—
Reissue	300	150	500	250	600	300	—
Provisional	200	100	0	0	0	0	—

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Small Entity Fee (\$)	Small Entity Fee Paid (\$)
—	—	—	—	50	25
—	—	—	—	200	100
—	—	—	—	360	180

HP = highest number of total claims paid for, if greater than 20.

**Indep. Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

— - 3 or HP= — x — = —

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
—	—	—	—	—

— - 100 = — / 50 = — (round up to a whole number) x — = —

**4. OTHER FEE(S)**

Petition for one month Extension of Time

Other (e.g., late filing surcharge): Two Terminal Disclaimers @ 180 Each

120

360

**SUBMITTED BY**

Signature

Name (Print/Type)

Quan Le Nguyen

Registration No.  
(Attorney/Agent)

46,957

Telephone

215-685-2158

Date

August 3, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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<b>FEE TRANSMITTAL</b> <b>for FY 2006</b>		<b>Complete if Known</b>	
		Application Number	09/998.718
		Filing Date	11/01/2001
		First Named Inventor	James A. Burke
		Examiner Name	Zohreh Fay
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Art Unit	1618
<b>TOTAL AMOUNT OF PAYMENT</b> (\$) 480		Attorney Docket No.	ALLE6002-100 17400 CIP (OCU)

**METHOD OF PAYMENT** (check all that apply)

- ☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) : \_\_\_\_\_  
☒ Deposit Account Deposit Account Number: 50-1275 Deposit Account Name: Cozen O'Connor  
 For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)  
☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee  
☒ Charge any additional fee(s) or underpayments of fee(s) ☒ Credit any overpayments

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	—
Design	200	100	100	50	130	65	—
Plant	200	100	300	150	160	80	—
Reissue	300	150	500	250	600	300	—
Provisional	200	100	0	0	0	0	—

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)  
 Each independent claim over 3 (including Reissues)  
 Multiple dependent claims

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	
— -20 or HP=	x	=	—	Fee (\$)	Fee Paid (\$)
HP = highest number of total claims paid for, if greater than 20.				—	—
Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)		
— - 3 or HP=	x	=	—		
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Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
— - 100 =	/ 50 =	(round up to a whole number) x	—	—

**4. OTHER FEE(S)**

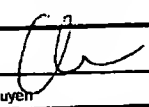
Petition for one month Extension of Time

Other (e.g., late filing surcharge): Two Terminal Disclaimers @ 180 Each

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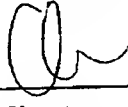
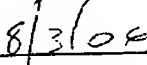
**SUBMITTED BY**

Signature		Registration No. (Attorney/Agent)	46,957	Telephone	215-665-2158
Name (Print/Type)	Quan La Nguyen			Date	August 3, 2006

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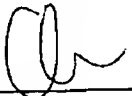
If you need assistance in completing this form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

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<b>PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2005</b> <i>(Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)</i>		Docket Number (Optional) ALLE6002-100 17400 CIP (OCU)																									
Application Number 09/998,718		Filed 11/01/2001																									
For Methods and Compositions for Treatment of Ocular Neovascular and Neural Injury																											
Art Unit 1618		Examiner Zohreh Fay																									
<p>This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.</p> <p>The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):</p> <table border="1"><thead><tr><th></th><th>Fee</th><th>Small Entity Fee</th><th></th></tr></thead><tbody><tr><td><input checked="" type="checkbox"/> One month (37 CFR 1.17(a)(1))</td><td>\$120</td><td>\$60</td><td>\$120</td></tr><tr><td><input type="checkbox"/> Two months (37 CFR 1.17(a)(2))</td><td>\$450</td><td>\$225</td><td>\$</td></tr><tr><td><input type="checkbox"/> Three months (37 CFR 1.17(a)(3))</td><td>\$1020</td><td>\$510</td><td>\$</td></tr><tr><td><input type="checkbox"/> Four months (37 CFR 1.17(a)(4))</td><td>\$1590</td><td>\$795</td><td>\$</td></tr><tr><td><input type="checkbox"/> Five months (37 CFR 1.17(a)(5))</td><td>\$2160</td><td>\$1080</td><td>\$</td></tr></tbody></table> <p><input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.</p> <p><input type="checkbox"/> A check in the amount of the fee is enclosed.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>50-1275</u>. I have enclosed a duplicate copy of this sheet.</p> <p><b>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</b></p> <p>I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71 Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96). <input type="checkbox"/> attorney or agent of record. Registration Number _____ <input checked="" type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>46,957</u></p> <p> _____ Signature QUAN LE NGUYEN _____ Typed or printed name</p> <p> _____ Date 215-665-2158 _____ Telephone Number</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p> <p><input checked="" type="checkbox"/> Total of 2 forms are submitted.</p>					Fee	Small Entity Fee		<input checked="" type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60	\$120	<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$450	\$225	\$	<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1020	\$510	\$	<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1590	\$795	\$	<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2160	\$1080	\$
	Fee	Small Entity Fee																									
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<b>PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2005</b> (Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)		Docket Number (Optional) ALLE6002-100 17400 CIP (OCU)																		
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For Methods and Compositions for Treatment of Ocular Neovascular and Neural Injury																				
Art Unit 1618		Examiner Zohreh Fay																		
<p>This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.</p> <p>The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):</p> <table><thead><tr><th></th><th>Fee</th><th>Small Entity Fee</th></tr></thead><tbody><tr><td><input checked="" type="checkbox"/> One month (37 CFR 1.17(a)(1))</td><td>\$120</td><td>\$60 \$120</td></tr><tr><td><input type="checkbox"/> Two months (37 CFR 1.17(a)(2))</td><td>\$450</td><td>\$225 \$</td></tr><tr><td><input type="checkbox"/> Three months (37 CFR 1.17(a)(3))</td><td>\$1020</td><td>\$510 \$</td></tr><tr><td><input type="checkbox"/> Four months (37 CFR 1.17(a)(4))</td><td>\$1590</td><td>\$795 \$</td></tr><tr><td><input type="checkbox"/> Five months (37 CFR 1.17(a)(5))</td><td>\$2160</td><td>\$1080 \$</td></tr></tbody></table> <p><input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.</p> <p><input type="checkbox"/> A check in the amount of the fee is enclosed.</p> <p><input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.</p> <p><input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.</p> <p><input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>50-1275</u>. I have enclosed a duplicate copy of this sheet.</p> <p><b>WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.</b></p> <p>I am the <input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71 Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).</p> <p><input type="checkbox"/> attorney or agent of record. Registration Number _____</p> <p><input checked="" type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. <u>46,957</u></p> <p> _____ Signature QUAN LE NGUYEN _____ Typed or printed name</p> <p><u>8/3/06</u> _____ Date 215-665-2158 _____ Telephone Number</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p> <p><input checked="" type="checkbox"/> Total of 2 forms are submitted.</p>				Fee	Small Entity Fee	<input checked="" type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60 \$120	<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$450	\$225 \$	<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1020	\$510 \$	<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1590	\$795 \$	<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2160	\$1080 \$
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This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



**DOCKET NO.: ALLE6002-100 [17400CIP(OCU)]**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Inventors: Larry A. Wheeler et al.**

**Serial No.: 09/998,718**

**Group Art Unit: 1618**

**Filed: November 01, 2001**

**Examiner: Fay, Zohreh A**

**Title: Methods and Compositions for Treatment of Ocular Neovascularization and Neural Injury**

**Mail Stop AMENDMENT**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir,

**REQUEST FOR RECONSIDERATION**

This is in response to the Non-Final Office Action dated April 06, 2006, in connection with the above-captioned patent application.

Applicant hereby authorizes the Office to charge or credit any appropriate fees to Applicant's Deposit Account Number 50-1275.

**DOCKET NO.: ALLE6002-100**  
**17400CIP(OCU)**  
**Serial No. 09/998,718**

**PATENT**

**Listing of Claims:**

The current status of all claims is listed below.

1-12. (cancelled)

13. (currently amended) A method of protecting ocular neural tissue from damage caused by electromagnetic irradiation of the retina comprising delivering to a patient's ocular neural tissue an amount of an alpha 2 selective agonist having alpha 2B adrenergic activity effective to protect a plurality of ocular neurons from cell death as compared to ocular neuron cell death following such irradiation observed in the absence of the administration of ~~said neuroprotectant~~ the alpha 2 selective agonist.

14. (previously presented) The method of claim 13 wherein said electromagnetic irradiation is laser irradiation.

15. (cancelled)

16. (cancelled)

17. (original) The method of claim 13 wherein said alpha 2 selective agonist is selected from the group consisting of brimonidine, clonidine and para-aminoclonidine.

18. (currently amended) The method of claim 17 wherein said ~~compound~~ alpha 2 selective agonist is brimonidine.

19. (previously presented) The method of claim 13 wherein said ~~alpha-adrenergic receptor agonist~~ alpha 2 selective agonist having alpha 2B adrenergic activity is an alpha 2B selective agonist.
20. (previously presented) The method of claim 19 wherein said alpha 2B selective agonist is selected from the group consisting of AGN 960, AGN 795 and AGN 923.
21. (original) The method of claim 20 in which the alpha 2B selective agonist is AGN 960.
22. (original) The method of claim 20 in which the alpha 2B selective agonist is AGN 795.
23. (original) The method of claim 20 in which the alpha 2B selective agonist is AGN 923.
24. (previously presented) The method of claim 13 in which the alpha 2 selective agonist is administered at a time sufficiently before said electromagnetic irradiation to permit localization within ocular tissue prior to said treatment.
25. (previously presented) The method of claim 13 in which the alpha 2 selective agonist is administered following said electromagnetic irradiation.
26. (currently amended) The method of claim 13 wherein said ~~compound~~ alpha 2 selective agonist is administered in an intraocular implant.
27. (currently amended) The method of claim 18 wherein said ~~compound~~ alpha 2 selective agonist is administered in an intraocular implant.

**REMARKS**

Upon entry of this amendment, claims 13, 14, and 17-27 will be pending. Claims 13, 18, 19, 26 and 27 have been amended for clarity, which is self-evident and is clearly supported by the specification at, for example, page 9, lines 5-8. No new matter has been added.

**I. Overview**

(A) With regard to the rejection of claims 13, 14, 17 and 18 under §102(e) over Wheeler et al. (U.S. Patent No. 6,194,415, hereinafter “the Wheeler patent”), it is Applicants’ belief that the rejection is overcome by Applicants’ showing that the disclosure in the Wheeler patent (relied on by the Office Action to make the 102(e) rejection) **was Applicants’ own work**. See MPEP 2136.05 and the Declaration by Dr. Wheeler discussed below.

(B) With regard to the rejection of claims 19-27 under §103 (a) over the Wheeler patent, it is Applicants’ belief that this rejection is overcome by a showing that both the Wheeler patent and the present application are **commonly owned** at the time they were filed, thereby disqualifying the Wheeler patent to be cited as a prior art under 103(a). See 35 U.S.C. §103 (c).

**II. Rejection Under 102(e) Is Overcome By a Showing That the Disclosure Relied Upon for the Rejection Was Applicants’ Own Work**

The Office Action states that claims 13, 14, 17 and 18 are anticipated by U.S. Patent 6,194,415 (“the Wheeler patent”), under 35 U.S.C. §102(e). To make the 102(e) rejection, the Office Action relied on the disclosure of the Wheeler at column 8, lines 12-22 and claim 1.

Specifically, the Office Action states that the present claims are anticipated by the Wheeler patent because the Wheeler patent teaches "the use of bromon[i]dine for the protection of neuronal tissue due to laser light. See column 8, lines 12-22 and claim 1."

It is established law that a 35 U.S.C. 102(e) rejection can be overcome by submitting a declaration under 37 CFR 1.132 to establish that the relevant disclosure is applicant's own work. See, *In re Mathews*, 408 F.2d 1393, 161 USPQ 276 (CCPA 1969); see also, MPEP § 2136.05.

**Accordingly, Applicants respectfully assert that the 102(e) rejection is overcome as the subject matter disclosed in the Wheeler patent that the Office Action relied on to make the rejection was invented by Dr. Larry A. Wheeler, who is also the inventor of the rejected claims 13, 14, 17 and 18.** In support of this assertion, Applicants submit herewith a Declaration of Dr. Larry A. Wheeler (enclosed). In the Declaration, Dr. Wheeler asserts that he is the inventor of the disclosure in the Wheeler patent that the Office Action relied upon to make the rejection against claims 13, 14, 17 and 18. Dr. Wheeler also asserts in the Declaration that he is the inventor of the subject matter in claims 13, 14, 17 and 18.

Thus, Applicants have overcome the 102(e) rejection of claims 13, 14, 17 and 18 over the Wheeler patent.

### **III. §103 Rejection: The Wheeler Patent Is Not Prior Art as It Is Commonly Assigned to Allergan**

The Office Action rejected claims 19-27 under 35 U.S.C. 103(a) as being obvious over the Wheeler patent. Applicants respectfully assert that the rejection under 103(a) should be withdrawn because the Wheeler patent cannot be used as a prior art against the present application. The Wheeler patent is not prior art against the present application because:

- (1) the present application was filed after November 29, 1999;

**DOCKET NO.: ALLE6002-100**  
**17400CIP(OCU)**  
**Serial No. 09/998,718**

**PATENT**

(2) the Wheeler patent qualifies as a 102 (e) reference; and

(3) the present application and the Wheeler patent were commonly owned by Allergan, Inc., when the invention of the present application was made. See 35 U.S.C. 103 (c) and MPEP §706.02 (1)(2). The attached Declaration by the attorney of record, Mr. Stephen Donovan, provides a statement that the present application and the Wheeler patent were owned by Allergan, Inc., at the time the invention of the present application was made.

Since the Wheeler patent is not prior art, Applicants respectfully request that the rejections under 35 U.S.C. 103(a) be withdrawn.

#### **IV. Terminal Disclaimers**

Claims 13, 14, 17 and 18 are rejected under the doctrine of obviousness-type double patenting over claim 1 of US Patent No. 6,194,415 and claim 7 of US Patent No. 6,465,464. Applicants submit herewith two terminal disclaimers regarding the two referenced US patents. Upon entry of the terminal disclaimers, the obviousness-type double patenting rejections are rendered moot. Accordingly, Applicants respectfully request that the rejection under the obviousness-type double patenting be withdrawn.

**DOCKET NO.: ALLE6002-100**  
**17400CIP(OCU)**  
**Serial No. 09/998,718**

**PATENT**

In view of the foregoing, Applicants submit that the pending claims are in condition for allowance, and an early Office Action to that effect is earnestly solicited.

Respectfully submitted,



---

Quan L. Nguyen  
Registration No. 46,957

Date: August 3, 2006

COZEN O'CONNOR  
1900 Market Street  
Philadelphia, PA 19103-3508  
Telephone: 215-665-2158  
Facsimile: 215-701-2057

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Larry A. Wheeler et al.

Serial No.: 09/998,718

Group Art Unit: 1618

Filed: November 01, 2001

Examiner: Fay, Zohreh A

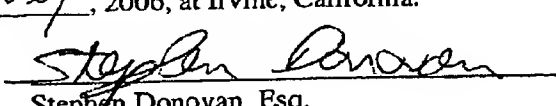
Title: **Methods and Compositions for Treatment of Ocular Neovascularization and Neural Injury**

**DECLARATION TO ESTABLISH COMMON OWNERSHIP  
MPEP § 706.02(1)(2)**

I, Stephen Donovan, declare as follows:

1. I am over the age of twenty one, competent to testify in a court of law, and could and would testify to the matters set forth below before the United States Patent and Trademark Office, if required to do so.
2. I am a registered patent attorney, registration number 33,433, and a member of the Bar of the State of California (Bar Number 131,928). I am the attorney of record in this patent application (US Patent No. 09/998,718, filed November 01, 2001, hereinafter "the 718 application").
3. I am employed by Allergan, Inc. as Vice President and Assistant General Counsel.
4. The 718 application and U.S. Patent No. 6,194,415 (filed January 04, 1999) were both owned by Allergan Sales, Inc. (now Allergan, Inc.) at the time the invention of the 718 application was made.
5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and/or imprisonment under Section 1001 of Title 18 of the United States Code and that any such willful false statements may jeopardize the validity of the above-identified application or any patent issuing therefrom.

Executed this 21<sup>st</sup> day of July, 2006, at Irvine, California.

  
Stephen Donovan, Esq.



**DOCKET NO.: ALLE6002-100**  
**17400CIP(OCU)**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Inventors: Larry A. Wheeler et al.**

**Serial No.: 09/998,718**

**Group Art Unit: 1618**

**Filed: November 01, 2001**

**Examiner: Fay, Zohreh A**

**Title: Methods and Compositions for Treatment of Ocular Neovascularization and Neural Injury**

**DECLARATION OF LARRY A. WHEELER**  
**PURSUANT TO 37 CFR 1.132**

I, Dr. Larry A. Wheeler, declare as follows:

1. I am over the age of twenty one, competent to testify in a court of law, and could and would testify to the matters set forth below before the United States Patent and Trademark Office, if required to do so.
2. I am employed by Allergan, Inc, the assignee of this application, in the position of Senior Vice President, Biological Sciences.
3. I am an inventor of U.S. Patent No. 6,194,415 (hereinafter "the Wheeler patent", filed January 04, 1999. Additionally, I am an inventor of the subject matter disclosed at column 8, lines 12-22 and claim 1 of the Wheeler patent.
4. Furthermore, I am an inventor of the instant patent application (U.S. Application No. 09/998,718). Finally, I am an inventor of the subject matter of claims 13, 14, 17 and 18 of this instant patent application.
5. I declare that all statements made herein are of my own knowledge true and statements made on information and belief are believed to be true; and further that these

DOCKET NO.: ALLE6002-100  
17400CIP(OCU)

PATENT

statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Larry A. Wheeler Date: 8/2/06  
Larry A. Wheeler, Ph.D.

**TERMINAL DISCLAIMER TO OBIATE A DOUBLE PATENTING  
REJECTION OVER A "PRIOR" PATENT**

Docket Number (Optional)  
ALLE6002-100 [17400CIP(OCU)]

In re Application of: James A. Burke et al.

Application No. : 09/998,718

Filed: 11/01/2001

For: Methods and Compositions for Treatment of Ocular Neovascularization and Neural Injury

The owner, Allergan Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 8,465,484 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later:

- expires for failure to pay a maintenance fee;
- is held unenforceable;
- is found invalid by a court of competent jurisdiction;
- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
- is reissued; or
- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney of record. Reg. No. 33,433

 7/19/08  
Signature Date

Stephen Donovan

Typed or printed name

714-248-4026

Telephone Number

- ☐ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

\* Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).  
Form PTO/SB/98 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**TERMINAL DISCLAIMER TO OBIVATE A DOUBLE PATENTING  
REJECTION OVER A "PRIOR" PATENT**

Docket Number (Optional)  
ALLE6002-100 (17400CIP(OCU))

In re Application of: James A. Burke et al.

Application No. : 09/998,718

Filed: 11/01/2001

For: Methods and Compositions for Treatment of Ocular Neovascularization and Neural Injury

The owner\*, Allergan Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,194,415 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

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- expires for failure to pay a maintenance fee;
- is held unenforceable;
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- is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- has all claims canceled by a reexamination certificate;
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- is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney of record. Reg. No. 33,433

  
Signature Date

Stephen Donovan

Typed or printed name

714-246-2046

Telephone Number

- ☐ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

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